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**In the United States District Court  
for the District of Utah, Central Division**

MARY KARKUT HOWARD,

Claimant,

vs.

BRANDON HOWARD, and BARBARA  
BUNTING, fka BARBARA HOWARD,

Claimants.

MEMORANDUM DECISION AND  
ORDER

Case No. 2:02cv1192

This matter is before the court on cross motions for summary judgment filed by the claimants to determine who should receive the proceeds of a life insurance policy in the name of William Gard Howard, who is deceased. The case was originally filed as an interpleader action by Prudential Insurance Co., which company submitted the funds to the clerk of the court, thus allowing the parties who claimed the funds to litigate the matter, free from any claim by Prudential.

The claimant parties filed written briefs and responses, and after oral argument the matter was submitted for decision and taken under advisement. Now being fully advised, the court issues its Memorandum Decision and Order.

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## STATEMENT OF THE FACTS

William Gard Howard (“the insured” or “Howard”) and Mary Karkut (“Mary”) were married on July 4, 1986 at St. Petersburg, Florida. At the time of the marriage the insured was employed by IBM. In connection with his employment Howard was issued the life insurance policy in question as part of an ERISA employee welfare plan. The terms of the policy included a choice of law clause designating New York law. The insured initially designated Mary, then his wife, as the beneficiary on December 21, 1987. Thirteen years later, the insured and Mary divorced. In the Divorce Decree, Mary waived all rights to the IBM retirement plan. On March 31, 2000, the same day the Divorce Decree was entered, the insured transmitted to IBM formal notice evidencing his clear intent to change the beneficiary of the life insurance policy from Mary to his children, Barbara Ann Bunting and William Karl Brandon Howard (“the children”). The change was set forth on a form provided by IBM entitled “Designation of Beneficiary Under IBM Group Life/Travel Accident Insurance Policies.”

IBM received the notice on April 3, 2000, and stamped it as received. The form was returned to the insured to have it witnessed. Prudential alleged in it’s interpleader action that insured also failed to comply with the “one choice option” concerning choice of beneficiaries, even though the choice was apparent from the language the insured had written on the form. In fact, box #1 was checked in which his children are clearly shown as beneficiaries each with a 50% interest.<sup>1</sup> Also, there is no evidence in the record, other than the allegation in the complaint, which required that the so called “one choice option” be made exclusively by marking a

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<sup>1</sup> See the attached photocopy of the form.

particular box on the form. The Affidavit of Jason Herme, the supervisor who was actively involved in processing the insured's change of beneficiary form, does not include any reference to a "one choice option." The only alleged defect on the change of beneficiary form identified by Jason Herme was that the form was "incomplete, still needing a witness signature."<sup>2</sup>

On January 25, 2002, the insured executed a will stating, "I leave my IBM life insurance proceeds to Barbara Ann Bunting and William Karl Brandon Howard in equal shares." William Gard Howard died on May 13, 2002 in Utah where he was being treated for an alcohol problem.

After the death of William Gard Howard, IBM notified Mary, the beneficiary of record, that she would receive the proceeds of the life insurance policy. However, also following the death of William Gard Howard, his daughter Barbara Bunting found among other personal papers a copy of the original change of beneficiary form which was signed and dated by the insured, with his signature duly witnessed by Nancy R. Edwards on April 14, 2000. That form immediately was provided to IBM.<sup>3</sup> Thereafter, on August 19, 2002, Prudential notified Mary that the children claimed the proceeds of the life insurance policy and filed a Complaint in

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<sup>2</sup> The Designation of Beneficiary form offers five choices as to the determination of the beneficiary, presenting the insured the opportunity to check the appropriate box and fill out the necessary information. The form which was returned to IBM by the children after it was found among Howard's personal effects shows that the first box was checked and that the names of his children were set forth as the beneficiaries. The second box was not checked, but some language was crossed out leaving intact the language "in equal shares/percentages to my children . . . who shall be living at my death." The document was signed on April 14, 2000, the same date the decedent's signature was witnessed.

<sup>3</sup> The terms of the policy indicate that delivery of a change of beneficiary notice is satisfactory "whether or not the Employee is living at the time the Policyholder receives such notice."

Interpleader with this court on November 1, 2002, in order to resolve the conflicting claims.

## ANALYSIS

The question before the Court is whether Mary or the children are entitled to the proceeds of the life insurance policy. Because there are no material facts in dispute the parties agree that the court should rule as a matter of law pursuant to Fed. R. Civ. Proc. 56. While Mary is the beneficiary according to the records of both IBM and Prudential, the children claim to be beneficiaries because the insured effectively changed the beneficiary from Mary to the children. The children also claim that pursuant to the Divorce Decree and the Will the children should be awarded the proceeds of the life insurance policy.

### I. Conflict of Laws

The threshold question is which law to apply. Because the law governing the legal effect of attempts to change the beneficiary of a life insurance policy vary, it is necessary to make this determination. Counsel for Mary argues for the application of Florida law, while counsel for the children submit that New York law, federal common law or Utah law should be applied. There is a nexus to the law of each jurisdiction. The insured and Mary were married and divorced in Florida where the insured worked; the retirement plan of which the life insurance policy was a part is federally governed under ERISA<sup>4</sup>; and the life insurance policy itself

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<sup>4</sup> ERISA, the federal law governing employee benefit packages, typically supersedes state law for matters that “relate to any employee benefit plan.” However, the statute includes an exception for laws which “regulate insurance.” Employee Retirement Income Security Act of 1974, § 514(a), (b)(2)(A); 29 U.S.C.A. § 1144(a), (b)(2)(A). Even if the issue at hand did not fall

designates New York law.

For purposes of conflict of laws, federal courts look to the law of the state in the district in which they sit, in order to determine which law to apply. See Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496, 61, S.Ct. 1020, 1021 (1941). In this case, the insured died in Utah, and the Utah Supreme Court has determined that the Restatement Second of Conflict of Laws should be used to resolve such conflict of laws questions. See American Nat'l Fire Ins. Co. v. Farmers Ins. Exch., 927 P.2d 186, 190 (Utah 1996).

Section 187 of the said Restatement indicates that where the parties have made a choice of law, usually expressly in a contract, the choice made “will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.” Restatement (Second) Conflict of Laws § 187(1) (1971). The Restatement further instructs that for contracts of adhesion, such as the insurance policy in this case, a court may “refuse to apply any choice-of-law provision . . . if to do so would result in substantial injustice to the adherent.” *Id.* at § 187 cmt. b.

As noted by claimants, New York is not the only state with a significant nexus to the case at hand. The deceased lived and worked in Florida where he earned the right to the life insurance policy; the divorce decree which mentions and purports to have some controlling effect on the life insurance policy was approved by a Florida court; the deceased died in Utah while

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under the “regulating insurance” provision, the Tenth Circuit has adopted the rule that for issues involving the state common law doctrine of substantial compliance, the action is “too tenuous, remote, or peripheral a matter to warrant a finding that the law relates to the plan” and therefore escapes pre-emption. Peckham v. Gem State Mutual of Utah, 964 F.2d 1043, 1052 (10th Cir. 1992) (quoting Shaw v. Delta Airlines Inc., 463 U.S. 85, 100 n.21, 103 S.Ct. 2890, 2901 n.21 (1983)).

undergoing treatment.<sup>5</sup>

In the case at bar, the choice-of-law provision referencing New York law would not result in substantial injustice. Because no injustice would result by reason of application of New York law, the court finds that the choice of law forum agreed upon under the terms of the policy, New York law, should govern.

## II. New York Law

In evaluating attempts to effectively change the beneficiary on a life insurance policy, New York law recognizes the “substantial compliance” doctrine, where strict compliance in following “the method prescribed by the insurance contract” is not necessary to effect a change of beneficiary. McCarthy v. Aetna Life Ins. Co., 704 N.E.2d 557, 560 (N.Y. 1998). The substantial compliance doctrine as adopted by New York courts states, “if the decedent has done all that was reasonably possible to show his intention or has made every reasonable effort to comply with the policy requirements, then substantial compliance with the terms of the policy will suffice to demonstrate the policyholder’s intent.” Id. (internal quotations omitted) (emphasis added).

In this case, the terms of the policy provide that the “Employee may . . . change the Beneficiary by filing written notice of the change through the Policyholder on a form furnished by or satisfactory to Prudential.” (Emphasis added). The policy further states “the

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<sup>5</sup> The end result likely would be the same under Utah, New York and federal law, since each recognizes and applies a doctrine of substantial compliance. On the other hand, Florida law does not recognize a doctrine of substantial compliance relative to change of beneficiary in a life insurance policy.

change shall take effect as of the date the Employee signed such notice, whether or not the Employee is living at the time the Policyholder received such notice . . .” (Emphasis added).

This court considers that the written form as filled out by the decedent and which the insured sent to IBM, constituted substantial compliance and was effective notwithstanding lack of a witness to the signature of decedent, and notwithstanding any alleged irregularity concerning the “one choice option.” In this regard, it was manifest from the initial submission of the form that decedent intended to change the beneficiary to the children. The form complied with all the explicit requirements of the policy. The form itself was provided by Prudential, signed by the insured and unmistakably provides who the new beneficiaries were to be. Furthermore, the written terms of the policy do not expressly require a witness to the insured’s signature for a change of beneficiary to take place. Accordingly, this court finds that substantial compliance was satisfied even before IBM returned the form for the ministerial act of obtaining a witness to insured’s signature.

There is another, even more compelling, reason to hold that substantial compliance occurred. Accordingly, *a fortiori*, delivery of the copy of the witnessed form after the insured’s death also qualifies as substantial compliance. The insured left a copy of the completely filled out and witnessed form among his personal effects and property. It was a copy of the previous form which the insured had provided to IBM, but which was returned for a witness to his signature. Having found this copy among the personal property of the insured after his death, the children delivered it to Prudential. The terms of the policy specifically contemplate that a “satisfactory” form may be delivered after the death of the insured. Under the circumstances of this case, delivery by a third party after the death of the insured satisfies

substantial compliance under New York law even after the death of the insured. The most reasonable act the insured could have taken to be certain that the change of beneficiary would be honored was to leave a copy of the form to be delivered after his death. The decedent left the form to be found among his personal belongings by those who would benefit by the change. No doubt the insured believed that he had already complied and that his clearly expressed intent to change beneficiaries would be honored. However, the decedent also left the signed copy among his personal effects so as to be doubly sure that the change he so clearly set forth would be honored.

Under the totality of the circumstances, this court finds that the decedent substantially complied with the terms of the policy so as to validly and effectively change the beneficiaries within the meaning of applicable New York law. Accordingly, this court finds the children, Brandon Howard and Barbara Bunting, to be the legal beneficiaries of the life insurance policy of the insured.<sup>6</sup>

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<sup>6</sup> The Divorce Decree and the Will are further evidence of the intent of the decedent, as well as evidence that the original named beneficiary should be estopped from asserting right to the insurance proceeds.



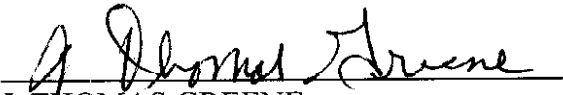
For the foregoing reasons, it is

ORDERED, that the Motion for Summary Judgment of claimants Brandon Howard and Barbara Bunting is GRANTED and the Motion for Summary Judgment of Mary Karkut Howard is DENIED; it is

FURTHER ORDERED, that the Clerk of the Court in the District of Utah is hereby ordered to disburse the proceeds of the insurance policy deposited with the Clerk of the Court by Prudential Insurance Co. to Brandon Howard and Barbara Bunting.

IT IS SO ORDERED.

DATED this 12<sup>th</sup> day of March 2004.

  
J. THOMAS GREENE  
UNITED STATES DISTRICT JUDGE

IBM

IBM Confidential

## Designation of Beneficiary Under IBM Group Life/Travel Accident Insurance Policies

|  |                        |   |              |   |  |          |            |
|--|------------------------|---|--------------|---|--|----------|------------|
| First Name<br>239976   | Last Name<br>HOWARD    | First Name<br>WILLIAM   | Initial<br>G | Date Employed<br>8/1/85                   | Person<br>IBM Group Life Only                                      | Location | Office Use |
| <input type="checkbox"/> New Employee <input type="checkbox"/> Beneficiary Change <input type="checkbox"/> Military Readjustment <input type="checkbox"/> Other <input checked="" type="checkbox"/>                    |                        | <input checked="" type="checkbox"/> To select of the following named persons) and/or charities in indicated percentages, who shall be living at my death: |              |   |  |          |            |
| Name   | Social Security Number | Relationship  | Share %      | Benefit %                                 | Address  |          |            |
| BARBARA ANNE HOWARD  | 276-66-3549            | DAUGHTER  | N            | 50  | 1446 E. VINEYARD CT. 84106   |          |            |
| W.K. BRANDON HOWARD  | 276-66-7334            | SON   | N            | 50  | SALT LAKE CITY, UT 84106<br>123 E. 1470 S.<br>FARMINGTON, UT 84402 |          |            |
| 2. <input type="checkbox"/> To children who shall be living at my death. If none of said children shall be living at my death, then to the executors or administrators of my estate (Note: Since words not applicable) |                        |   |              |   |  |          |            |
| Name   |                        | Social Security Number  | Relationship | Address                                   |  |          |            |
| To   |                        |   |              | If living, otherwise                      |  |          |            |
| To   |                        |   |              |   |  |          |            |
| To   |                        |   |              |   |  |          |            |
| To   |                        |   |              |   |  |          |            |
| 4. <input type="checkbox"/> To the executors or administrators of my estate  |                        |   |              |   |  |          |            |
| Signature of Testator<br>W.K. Howard   |                        | Name of Trust<br>Mary B. Edwards  |              | Date of Trust Agreement<br>April 14, 2000 |  |          |            |
| Signature of Beneficiary (Please Print)<br>William G. Howard   |                        | Signature of Witness (Please Print)<br>Mary B. Edwards  |              | Date of Last Agreement<br>April 14, 2000  |  |          |            |

Send completed card to IBM HRSC

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PRUDENTIAL INS. CO.

United States District Court  
for the  
District of Utah  
March 15, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cv-01192

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